

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

PHILIP N. LILIENTHAL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

---

Transcript of the Record

---

Upon Petition to Review an Order of the United States  
Board of Tax Appeals.

FILED

MAR 19 1935

PAUL P. O'BRIEN,

CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

PHILIP N. LILIENTHAL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

---

Transcript of the Record

---

Upon Petition to Review an Order of the United States  
Board of Tax Appeals.



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer .....	15
Certificate and Seal.....	57
Decision .....	24
Docket Entries .....	1
Memorandum Opinion .....	16
Petition .....	3
Petition for Review with Proof of Service.....	30
Praecipe with Proof of Service.....	55
Statement of Evidence.....	31



## APPEARANCES.

For Taxpayer:

JOHN C. ALTMAN, Esq.

For Comm'r:

W. FRANK GIBBS, Esq.

---

Docket No. 56815

PHILIP N. LILIENTHAL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## DOCKET ENTRIES.

1931

Apr. 20—Petition received and filed. Taxpayer notified. (Fee paid)

“ 20—Copy of petition served on General Counsel.

Jul. 31—Answer filed by General Counsel.

Aug. 8—Copy of answer served on taxpayer. Circuit Calendar.

1934

Apr. 18—Hearing set week of July 2, 1934 at San Francisco, California.

1934

- Jul. 5—Hearing had before Mr. Morris on merits. Submitted. Stipulation of facts filed. Petitioner's brief due August 25, 1934.  
Respondent's brief due 9/10/34—Petitioner's reply due 9/25/34.
- “ 17—Transcript of hearing of July 5, 1934 filed.
- Aug. 6—Motion for extension to 9/10/34 to file brief filed by taxpayer.
- “ 7—Motion for extension to 9/10/34 to file brief granted.
- Sep. 4—Brief filed by General Counsel.
- “ 8—Brief filed by taxpayer. 9/10/34 copy served on General Counsel.
- “ 28—Memorandum opinion rendered, Logan Morris, Div. 14. Judgment will be entered for the respondent.
- “ 29—Decision entered, Div. 14, Logan Morris.
- Dec. 17—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.
- “ 17—Proof of service filed by taxpayer.

1935

- Jan. 24—Motion for 30 days extension to complete record filed by taxpayer.
- “ 24—Order enlarging time to March 18, 1935 for preparation of evidence and delivery of record entered.
- Feb. 11—Agreed statement of evidence lodged.
- “ 11—Praecipe with proof of service thereon filed.
- “ 12—Agreed statement of evidence approved and ordered filed. [1\*]



United States Board of Tax Appeals

Docket No. 56815

PHILIP N. LILIENTHAL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:E-1-JHU-60D) dated March 9, 1931, and as a basis of his proceeding, alleges as follows:

I.

The petitioner is an individual, with his place of business at No. 2 Pine Street, San Francisco, California.

II.

The notice of deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on March 9, 1931.

III.

The taxes in controversy are individual income taxes for the calendar year 1927 and for the sum of \$38,107.54; the entire amount of said taxes is in dispute. [2]

## IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

1. The determination by the Commissioner that Ruth H. Lilienthal, the wife of petitioner (petitioner and said Ruth H. Lilienthal having filed a single joint income tax return for the calendar year 1927) realized during the calendar year 1927 taxable capital net gain in the sum of \$556,449.12 in connection with the exchange by said Ruth H. Lilienthal of 4400 shares of common stock of Southern California Gas Company, of the par value of \$25.00 per share, for \$260,609.12 cash and Southern California Gas Corporation Collateral Trust Gold Bonds 5%, Series due 1937, of the par value of \$339,500.00. In this behalf, petitioner sets forth that said exchange was made in pursuance of a plan of reorganization (as defined in Section 203 (h) (1) (A) of the Revenue Act of 1926) and that by virtue of the provisions of Section 203, subdivision (b) (2) and subdivision (d) (1) of the said Act of 1926, the taxable gain to said Ruth H. Lilienthal to be recognized upon such exchange is limited to the amount of cash received by her. Accordingly, the taxable capital net gain realized by said Ruth H. Lilienthal in connection with said exchange was the sum of \$260,609.12, and no more, as was reported by petitioner in the single joint income tax return as originally filed for the year 1927.

## V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

1. During the entire calendar year 1927, petitioner and Ruth H. Lilienthal were, and now are, husband and wife and living [3] together as such. Pursuant to the provisions of Section 223, subdivision (b) of the Revenue Act of 1926, petitioner and said Ruth H. Lilienthal did elect to make a single joint income tax return for the calendar year 1927 and in accordance with such election, petitioner did, within the time and in the manner required by law, execute and file an income tax return, wherein there was included the income of petitioner and of said Ruth H. Lilienthal, his wife, for the calendar year 1927.

2. In June, 1920, said Ruth H. Lilienthal acquired by gift from Abraham Haas, 1000 shares of common stock of Southern California Gas Company, of the par value of \$100.00 per share. Said Abraham Haas died in August, 1921, and the said 1000 shares of stock were included in the gross estate of Abraham Haas at a valuation of \$15,000.00 for Federal Estate Tax purposes, upon the ground that the transfer of said shares of stock by Abraham Haas to Ruth H. Lilienthal was made in contemplation of death. On August 11, 1921, said Ruth H. Lilienthal acquired by bequest and inheritance from said Abraham Haas, 100 additional shares of common stock of Southern California Gas Company, of the par value of \$100.00 per share, and said 100 shares of stock were included in the gross estate of Abraham Haas at a valuation of \$1500.00 for Federal Estate Tax purposes. In November, 1926, said

Ruth H. Lilienthal received in exchange for said 1100 shares of common stock of Southern California Gas Company, of the par value of \$100.00 per share, 4400 shares of common stock of said Southern California Gas Company, of the par value of \$25.00 per share. By virtue of the foregoing, the cost basis to said Ruth H. Lilienthal, for income tax purposes, [4] of said 4400 shares of common stock of Southern California Gas Company was and is the sum of \$16,500.00. Said Ruth H. Lilienthal continuously held and owned said shares of common stock of Southern California Gas Company from the time of their acquisition by her as aforesaid, until November, 1927.

3. In the year 1927, there were two existing corporations, viz, Southern California Gas COMPANY and Midway Gas Company. In pursuance of a plan of reorganization, a third corporation was organized in the year 1927 known as "Southern California Gas CORPORATION"; this latter corporation acquired, during the year 1927, in excess of ninety-five per cent of the issued and outstanding capital stock of Midway Gas Company for cash and its bonds, viz: Bonds of Southern California Gas CORPORATION. This new corporation, viz: Southern California Gas CORPORATION, also acquired, during the year 1927, in pursuance of the foregoing plan of reorganization, 319,116 shares of common stock of Southern California Gas COMPANY for cash and its bonds, viz: Bonds of Southern California Gas CORPORATION. At the time

of the acquisition by Southern California Gas CORPORATION of said 319,116 shares of common stock of Southern California Gas COMPANY, the issued and outstanding shares of stock of Southern California Gas COMPANY consisted of 320,000 shares of common stock and 166,879 shares of preferred stock, and each of said classes of stock, to-wit: Said common stock and said preferred stock of Southern California Gas COMPANY constituted "voting stock" and had full and equal voting privileges. That said Southern California Gas CORPORATION, in pursuance of said plan of reorganization, acquired more than a majority (and to-wit: in excess of 65 per cent) of the voting stock of said Southern California Gas Company. That [5] at the time of said acquisition, said Southern California Gas COMPANY had no shares of stock issued or outstanding or authorized other than as above set forth, and had no shares of stock issued or outstanding or authorized which did not constitute voting stock or which did not have full and equal voting privileges.

4. During the month of November, 1927, said Ruth H. Lilienthal, in pursuance of the foregoing plan of reorganization, exchanged said 4400 shares of common stock of Southern California Gas COMPANY of the par value of \$25.00 per share, acquired and owned by her as aforesaid, for the net sum of \$260,609.12 cash and \$339,500.00 par value of collateral trust gold bonds 5% series due 1937, of Southern California Gas CORPORATION.



## VI.

That during the calendar year 1928, petitioner paid to the Collector of Internal Revenue at San Francisco, the sum of \$43,235.16 as and for income taxes due from petitioner and his wife, Ruth H. Lilienthal, computed on the aggregate income of petitioner and said Ruth H. Lilienthal for the calendar year 1927.

WHEREFORE, your petitioner prays that this Board may hear the proceeding and determine that there is no deficiency in income taxes herein, and for such other and further relief as may be meet and proper in the premises.

JOHN C. ALTMAN

RICHARD S. GOLDMAN

Counsel for Petitioner,

615 Russ Building,

San Francisco, California. [6]

State of California,

City and County of San Francisco.—ss.

Philip N. Lilienthal, being first duly sworn, deposes and says:

That he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein and that the facts stated are true.

PHILIP N. LILIENTHAL

Subscribed and sworn to before me this 13th day of April, 1931.

[Seal]

LOUIS WIENER

Notary Public in and for the City and County of San Francisco, State of California. [7]

EXHIBIT "A"

TREASURY DEPARTMENT

Washington

Office of  
Commissioner of Internal Revenue

---

Address Reply to  
Commissioner of Internal Revenue

and refer to

Mar. 9, 1931

Mr. Philip N. Lilienthal,

2 Pine Street,

San Francisco, California.

Sir:

You are advised that the determination of your tax liability for the year(s) 1927 discloses a deficiency of \$38,107.54, as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges,

since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,

Commissioner.

By J. C. WILMER

Deputy Commissioner.

Enclosures:

Statement

Form 882

Form 870 [8]

IT:AR:E-1

JHU-60D

In re: Mr. Philip N. Lilienthal,  
2 Pine Street,  
San Francisco, California.

Tax Liability

Year—1927

Tax Liability—\$81,342.70

Tax Assessed—\$43,235.16

Deficiency—\$38,107.54

The report of the internal revenue agent in charge at San Francisco, California, covering an investigation of your income tax liability for the year 1927 has been reviewed by this office and approved with the following exceptions:



Profit from the exchange of stock of the Southern California Gas Company for cash and bonds of the Southern California Gas Corporation has been adjusted.

The net tax previously assessed is \$43,235.16 instead of \$43,239.66.

The adjustment of these items increases the deficiency indicated by the report from \$1,114.74 to \$38,107.54.

The deficiency was determined as follows:

Ordinary net income reported on return	\$ 64,451.57	
Capital net gain reported on return	305,579.77	
		<hr/>
Total net income reported		\$370,031.34
Add:		
1. Dividends	\$ 1,200.00	
2. Losses disallowed	5,550.00	
3. Capital gain	294,706.42	301,456.42
	<hr/>	<hr/>
Total net income adjusted		671,487.76
		[9]

## Computation of Tax

Total net income adjusted		\$671,487.76
Less:		
Capital net gain included		600,286.19
		<hr/>
Ordinary net income adjusted		\$ 71,201.57
Less:		
Dividends	\$60,797.78	
Liberty bond interest	242.25	
Personal exemption and credit for dependents	4,300.00	\$ 65,340.03
		<hr/>
Net income subject to normal tax		\$ 5,861.54
Normal tax at 1½% on \$ 4,000.00		60.00
Normal tax at 3% on \$ 1,861.54		55.85
Surtax on \$ 71,201.57		6,276.28
Tax at 12½% on \$600,286.19		75,035.77
		<hr/>
Total		\$ 81,427.90
Less:		
Earned income credit	\$ 2.62	
Tax paid at source	82.58	85.20
		<hr/>
Total amount assessable		\$ 81,342.70
Tax previously assessed	\$43,239.66	
Allowed	4.50	43,235.16
		<hr/>
Deficiency		\$ 38,107.54

## Explanation of Changes

1. The amount of \$1,200.00 represents a distribution of \$4.00 a share on 300 shares of stock of the California Wine Association. Inasmuch as the distribution was from earnings, the amount has been transferred from capital gain and included in dividends.

2. The deduction of \$5,550.00 claimed for loss on investments in the Newland Electric Rights, Limited, Newland Patent Rights, Limited and Newland Magnets Company has been disallowed for the reason that the information furnished is not sufficient to establish the fact that the loss was deductible in the year 1927. [10]

3. You reported as capital gain \$308,201.69 from the exchange of stock of the Midway Gas Company and the Southern California Gas Company for bonds of the Southern California Gas Corporation and cash. The amount which you reported represented the cash received. It is held that the profit resulting to the stockholders on the exchange of their stock in the Midway Gas Company is to be determined in accordance with section 203(d)(1) of the Revenue Act of 1926. The taxable gain in this case cannot exceed the amount received in cash.

With reference to the exchange of stock of the Southern California Gas Company, it is held that this transaction does not fall within the provisions of section 203(d)(1) of the 1926 Act. For the purpose of determining the amount of gain or loss, the total consideration received for the stock disposed of is the fair market value of the bonds as of the effective date of the transaction, plus the amount received in cash. Capital net gain, therefore, has been adjusted as follows:

4400 shares of Southern California Gas Company (par value \$25.00) exchanged for:	
(a) 243.907 per \$100.00 par value cash	\$268,297.70
(b) 308.702 per \$100.00 par value bonds (fair market value, 92)	312,406.42
	<hr/>
Total	\$580,704.12
Appraised value of original stock	16,500.00
	<hr/>
Gross profit on Southern California stock	\$564,204.12
Gross profit on Midway Gas Company stock (limited to cash received)	48,781.40
Proceeds, sale of fractional bonds	287.59
	<hr/>
Total gross profit	\$613,273.11
Less: Proportionate share of expenses	9,165.00
	<hr/>
Net profit (capital gain)	\$604,108.11
Profit reported on return	308,201.69
	<hr/>
Additional profit from exchange	\$295,906.42
Less:	
California Wine Association income transferred to dividends	1,200.00
	<hr/>
Net increase in capital gain	\$294,706.42
	[11]

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1927, the Bureau will be

unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 and/or article 451 of Regulations 74 to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926 and/or section 272(a) of the Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

[Endorsed]: U. S. Board of Tax Appeals. Filed Apr. 30, 1931. [12]

---

[Title of Court and Cause.]

ANSWER.

Comes now the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel for the Bureau of Internal Revenue and for answer to the petition of the above-named taxpayer admits and denies as follows, to-wit:

I, II, III. Admits the allegations contained in paragraphs I, II, and III of the petition.

IV(1). Denies the allegations of error contained in paragraph IV(1) of the petition.

V. Denies the allegations contained in paragraphs V(1) to (4), inclusive, of the petition.

Denies generally and specifically each and every allegation set forth in the petition not hereinbefore admitted, qualified, or denied.

WHEREFORE, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST,  
General Counsel,  
Bureau of Internal Revenue.

Of Counsel:

MASON B. LEMING,  
IRVING M. TULLAR,  
Special Attorneys,  
Bureau of Internal Revenue.

[Endorsed]: U. S. Board of Tax Appeals. Filed  
Jul. 31, 1931. [13]

---

[Title of Court and Cause.]

John C. Altman, Esq., for the petitioner.

W. Frank Gibbs, Esq., for the respondent.

#### MEMORANDUM OPINION.

MORRIS: The respondent having determined a deficiency in income tax of \$38,107.54 for the calendar year 1927, the petitioner brings this proceeding for the redetermination thereof, alleging error by reason of the respondent's failure to hold that the acquisition of a majority of the capital stock of Southern California Gas Company by Southern California Gas Corporation for cash and bonds of the latter was a reorganization under the provisions of [14] section 203(h)(1) of the Revenue Act of 1926, and that by virtue of the provisions of section 203(b)(2) and (d)(1), the taxable gain to



the petitioner's wife (petitioner and his wife having filed a joint return for the taxable year in question) to be recognized upon such exchange should be limited to the amount of the cash received by her.

The petitioner is an individual, with his place of business at San Francisco, California, and with his residence at Burlingame, California.

During the entire calendar year 1927 petitioner and Ruth H. Lilienthal were, and continuously since said last mentioned date have been husband and wife and living together as such.

Pursuant to the provisions of Section 223, subdivision (b) of the Revenue Act of 1926, petitioner and said Ruth H. Lilienthal elected to make a single joint income tax return for the calendar year 1927, and in accordance with such election, petitioner, on or about the 14th day of March, 1928, filed with the Collector of Internal Revenue at San Francisco, California, a single joint income tax return for the calendar year 1927, wherein there was reported and included the income of petitioner and of said Ruth H. Lilienthal, his wife, for such calendar year 1927.

Continuously from August 1921 to November 1926, said Ruth H. Lilienthal was the owner of 1,100 shares of the common stock of Southern California Gas Company having a par value of \$100 per share. In November 1926, she in a non-taxable exchange, for said 1,100 shares, received 4,400 shares of the common stock of said Southern California Gas Company having a par value of \$25 per share and continuously owned said 4,400 shares to November 17,

1927. Said 4,400 shares had a cost basis of \$16,500. [15]

In the year 1927 there were two existing corporations, Southern California Gas Company and Midway Gas Company, which were incorporated under the laws of the State of California, on October 5, 1910, and November 11, 1911, respectively.

The Southern California Gas Company was principally engaged in distributing natural and artificial gas to retail and industrial consumers. The Midway Gas Company was principally engaged in purchasing natural gas in the oil fields, transporting it to cities and selling it to distributing companies. Midway sold the bulk of its gas to Southern California Gas Company.

Under date of October 17, 1927, an agreement was entered into between some of the larger stockholders of the Southern California Gas Company and the Midway Gas Company and a Syndicate of Bankers composed of Chase Securities Corporation, Stone and Webster, Hunter, Dulin and Company, and Pynchon and Company, which agreement provided, among other things, that (1) the Southern California Gas Company was to acquire the properties and business of the Midway Gas Company for capital stock and bonds of the Southern California Gas Company, and (2) for the organization of a new corporation which was to acquire all or practically all of the common stock of the Southern California Gas Company and all of the capital stock of the Midway Gas Company for cash and bonds of the contemplated new company.



On October 4, 1927, the Midway Gas Company adopted resolutions authorizing the sale of its properties and business to the Southern California Gas Company. Said resolution provided that it was the plan of the board of directors that "said common capital stock and said bonds of the Southern California Gas Company to be received for Midway Gas Company assets shall [16] be distributed to the stockholders of this corporation when, as and if received by this corporation and as soon as such distribution may lawfully be made."

On October 17, 1927, the Southern California Gas Company had issued and outstanding 240,000 shares of common stock of a par value of \$25 a share, and 182,226 shares of preferred stock of a par value of \$25 a share. Both classes of stock had equal share voting rights. On said date the Midway Gas Company had issued and outstanding 23,264 shares of capital stock of a par value of \$100 a share, all fully voting common stock.

On October 31, 1927, the Southern California Gas Company acquired all of the properties and business of the Midway Gas Company as of August 31, 1927, in consideration of a new issue of 80,000 shares of its capital stock of a par value of \$25 a share and \$2,942,000 face value of a new issue of bonds of said Southern California Gas Company due in 1957, and the assumption of Midway Gas Company's liabilities. Immediately after this transaction and throughout the remainder of 1927, the Southern California Gas Company had outstanding 320,000

shares of common capital stock, and 182,226 shares of voting preferred stock.

In accordance with the terms of the agreement of October 17, 1927, a new corporation, the Southern California Gas Corporation, was organized under the laws of the State of Delaware on November 12, 1927. Said corporation had an authorized capital stock of \$16,500,000 consisting of \$7,500,000 preferred and \$9,000,000 common, all of which was issued and outstanding on [17] November 17, 1927. Under date of November 17, 1927, the Southern California Gas Corporation acquired under the provisions of the contracts of October 17 and November 17, 1927, and certain deposit agreements referred to in said contracts, 23,121 shares out of a total of 23,264 shares of capital stock of the Midway Gas Company, and 239,608 shares out of a total of 320,000 shares of the outstanding common stock of the Southern California Gas Company, for cash and bonds of the said Southern California Gas Company. [Corporation]

The Southern California Gas Corporation issued, on November 17, 1927, for the said shares of stock of Midway Gas Company and Southern California Gas Company, bonds having a par value of \$24,942,000. Virtually all of the remaining \$58,000 face value of bonds of that issue were subsequently issued in the acquisition of the remaining common stocks of the two said companies. The stocks of Southern California Gas Company and Midway Gas Company, acquired by Southern California Gas

Corporation, as herein set forth, were deposited with a trustee as collateral for the bonds issued as partial consideration therefor.

On November 17, 1927, the board of directors of Midway Gas Company declared a dividend of \$2,942,000, and paid the same in Temporary Certificates of the First Mortgage and Refunding Gold Bonds, 5%, due 1957 of Southern California Gas Company.

These bonds were sold on November 17, 1927, at 95, and the proceeds therefrom were used by the Southern California Gas Corporation of Delaware in the acquisition of the stock of Midway Gas Company and of Southern California Gas Company, as aforesaid. [18]

On December 10, 1927, Midway Gas Company distributed the 80,000 shares of common stock of the Southern California Gas Company to its stockholders, one of whom was Southern California Gas Corporation, which received, as such stockholder, 79,508 of the 80,000 shares of the common stock of Southern California Gas Company.

Midway Gas Company did no business thereafter, but retained its charter until March 21, 1934, for the purpose of settling its prior years income taxes.

After the acquisition of the 319,116 shares of the common stock of the Southern California Gas Company by the Southern California Gas Corporation, as aforesaid, the Southern California Gas Company continued, and still does continue, its corporate existence. Its operations were enlarged as it

then had the gas gathering and transporting assets formerly owned by Midway Gas Company. There were some changes in its directorate and management.

Pursuant to the agreement of October 17, 1927, as modified by an agreement dated November 17, 1927, said Ruth H. Lilienthal received for her 4,400 shares of common stock of Southern California Gas Company, \$260,609.12 cash and bonds of Southern California Gas Corporation of the par value of \$339,500 and of the fair market value of \$312,340.

The \$260,609.12 was the amount of cash payable to said Ruth H. Lilienthal (including proceeds of sale of a fractional bond), after deducting \$1.375 per share brokerage, commissions and her share of other expenses of carrying out the transaction.

The petitioner reported in his single joint income tax return for the calendar year 1927, a profit of \$260,609.12, being the amount of the cash [19] received by said Ruth H. Lilienthal. Said Ruth H. Lilienthal did not, in 1927, sell or otherwise dispose of any of the bonds of Southern California Gas Corporation received for her stock.

The respondent adjusted said Ruth H. Lilienthal's income for 1927, by increasing the same in the amount of \$295.840, representing the fair market value of the bonds received, after deducting from such fair market value the sum of \$16,500, representing the cost to said Ruth H. Lilienthal of her stock.

The deficiency letter explained the adjustment as follows:

With reference to the exchange of stock of the Southern California Gas Company, it is held that this transaction does not fall within the provisions of Section 203 (d) (1) of the 1926 Act. For the purpose of determining the amount of gain or loss, the total consideration received for the stock disposed of is the fair market value of the bonds as of the effective date of the transaction, plus the amount received in cash. Capital net gain therefore has been adjusted \* \* \*.

The facts of this case and the issue presented are, as the respondent contends and the petitioner concedes, identical with those in *J. S. Rippel & Company*, 30 B. T. A. 1146, wherein we held that there was no reorganization within the meaning of section 203 (h) (1) of the Revenue Act of 1926, and that, therefore, the gain derived by the petitioner upon the exchange of stock in one corporation for cash and bonds of the other was recognizable for tax purposes to the extent of both cash and bonds so received. Accordingly, we have no other alternative than to sustain the respondent's determination.

Judgment will be entered for the respondent.

[Endorsed]: Entered Sep. 28, 1934. [20]



United States Board of Tax Appeals  
Washington

Docket No. 56815

PHILIP N. LILIENTHAL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered September 28, 1934, it is

ORDERED and DECIDED: That there is a deficiency of \$38,107.54 for the calendar year 1927.

[Seal] (Signed) LOGAN MORRIS,  
Member.

[Endorsed]: Entered Sep. 29, 1934. [21]

---

[Title of Court and Cause.]

PETITION FOR REVIEW AND  
ASSIGNMENTS OF ERROR.

To the Honorable Judges of the United States  
Circuit Court of Appeals, for the Ninth Circuit:

Now comes Philip N. Lilienthal, by his attorneys, John C. Altman and Richard S. Goldman, and respectfully shows:

## I.

That petitioner on review (hereinafter referred to as petitioner) is an individual, with his place of business at San Francisco, California, and with his residence at Burlingame, California. During the entire calendar year 1927, petitioner and Ruth H. Lilienthal were husband and wife, and living together as such. Pursuant to the provisions of Section 223, subdivision (b) of the Revenue Act of 1926, petitioner and said Ruth H. Lilienthal elected to make a single joint income tax return for the calendar year 1927, and in accordance with such election, petitioner, on or about the 14th day of March, 1928, filed with the Collector of [22] Internal Revenue, for the First District of California, at San Francisco, California, a single joint income tax return for the year 1927 involved herein, wherein there was reported and included the income of petitioner and of said Ruth H. Lilienthal, his wife, for such calendar year 1927. The office of said Collector is located within the Judicial Circuit of the United States Circuit Court of Appeals, for the Ninth Circuit. Respondent on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

## II.

The nature of the controversy is as follows:

On November 17, 1927, Ruth H. Lilienthal was the owner of 4,400 shares of common stock of South-

ern California Gas Company (hereinafter referred to as Old Southern), having a par value of \$25.00 per share; said shares of stock had a cost basis of \$16,500.00, and constituted "capital assets" within the purview of Section 208 of the Revenue Act of 1926.

### III.

On November 17, 1927, Ruth H. Lilienthal received in exchange for said shares of stock \$339,500.00 par value of bonds of Southern California Gas Corporation (hereinafter referred to as New Southern) and cash in the sum of \$260,609.12; said bonds had at date of receipt, a fair market value of \$312,340.00.

Petitioner reported in a single joint income tax return for the year 1927, a profit on the above exchange of \$260,609.12, [23] being the amount of cash received by Ruth H. Lilienthal, but considered the bonds of New Southern as having been received in a nonrealizing transaction, to-wit: in connection with a reorganization resulting from the acquisition by New Southern of a majority of the capital stock of Old Southern in exchange for bonds of New Southern and cash.

In determining the profit on the transaction, the Commissioner adjusted Ruth H. Lilienthal's income for 1927 by increasing the same in the amount of \$295,840.00, representing the excess of the fair market value of bonds received over the cost to Ruth H. Lilienthal of her 4,400 shares of stock of Old Southern.



The Commissioner, pursuant to Section 274 of the Revenue Act of 1926, notified Philip N. Lilienthal, petitioner, of his determination of income tax liability for the year 1927, and petitioner duly filed a petition with the United States Board of Tax Appeals from the Commissioner's determination for said year. The proceeding was duly heard before the Board. The Board's opinion was promulgated on September 28, 1934, and its decision fixing the amount of tax liability pursuant to the opinion was entered on September 29, 1934.

The Board decided that the acquisition by New Southern of a majority of the capital stock of Old Southern for cash and bonds of New Southern did not constitute a reorganization within the meaning of Section 203 (h) (1) of the Revenue Act of 1926, and that therefore the gain derived by Ruth H. Lilienthal upon the exchange of stock of Old Southern for cash and bonds of New [24] Southern was recognizable for income tax purposes to the extent of both the cash and bonds so received.

Petitioner contends that the acquisition by New Southern of a majority of the capital stock of Old Southern for cash and bonds constituted a reorganization under the provisions of Section 203 (h) (1) of the Revenue Act of 1926 and that by virtue of the provisions of subdivisions (b) (2) and (d) (1) of Section 203 of the Revenue Act of 1926, the taxable gain to Ruth H. Lilienthal to be recognized upon such exchange should be limited to the amount of cash received by Ruth H. Lilienthal.

If the position of the Commissioner, as sustained by the Board, be correct, then the amount of the deficiency as determined is unassailable; on the other hand, if the position of petitioner be correct, there is no deficiency herein.

#### IV.

The petitioner's assignments of error are as follows:

(1) The Board of Tax Appeals erred in holding and deciding that the acquisition by Southern California Gas Corporation (New Southern) of a majority of the capital stock of Southern California Gas Company (Old Southern) for cash and bonds of New Southern did not constitute a reorganization within the meaning of Clause (A) of Section 203 (h) (1) of the Revenue Act of 1926.

(2) The Board of Tax Appeals erred in not holding and deciding that the acquisition by New Southern of a majority of the capital stock of Old Southern for cash and bonds of New Southern constituted a reorganization within the meaning of Clause (A) of Section 203 (h) (1) of the Revenue Act of 1926.

[25]

(3) The Board erred in holding and deciding that the gain derived by Ruth H. Lilienthal upon the exchange of stock of Old Southern for cash and bonds of New Southern was recognizable for income tax purposes to the extent of both cash and bonds so received.

(4) The Board erred in not holding and deciding that the taxable gain derived by Ruth H. Lilienthal

upon the exchange of stock of Old Southern for cash and bonds of New Southern was limited to the amount of cash received by Ruth H. Lilienthal.

(5) The Board erred in holding and deciding that there is a deficiency in income taxes for 1927 of \$38,107.54, or any other sum.

(6) The Board erred in not holding and deciding that there is no deficiency in income taxes for 1927.

WHEREFORE, petitioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals, for the Ninth Circuit; that a transcript of the record be prepared in accordance with law and with the rules of said Court, and transmitted to the Clerk of the said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

JOHN C. ALTMAN

RICHARD S. GOLDMAN

Attorneys for Petitioner,

615 Russ Building,

San Francisco, California. [26]

State of California,

City & County of San Francisco.—ss.

John C. Altman, being first duly sworn, deposes and says: That he is one of the attorneys of record for petitioner in the above matter, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge.

JOHN C. ALTMAN

Subscribed and sworn to before me this 10th day of December, 1934.

[Seal]

LOUIS WIENER

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires July 30, 1935.

[Endorsed]: U. S. Board of Tax Appeals. Filed Dec. 17, 1934. [27]

---

[Title of Court and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW.

To: GUY T. HELVERING,

Commissioner of Internal Revenue,  
Washington, D. C.

ROBERT H. JACKSON,

Assistant General Counsel for Bureau of  
Internal Revenue,  
Washington, D. C.

YOU ARE HEREBY NOTIFIED that Philip N. Lilienthal, petitioner, did on the 17 day of December, 1934, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals, for the Ninth Circuit, of the decision of the Board heretofore rendered in the above entitled action. A copy of the petition for review and the assignments of error as filed, is hereto attached and served upon you.

Dated this 17 day of December, 1934.

JOHN C. ALTMAN

RICHARD S. GOLDMAN

Attorneys for Petitioner.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein is hereby acknowledged this 17 day of December, 1934.

GUY T. HELVERING

Respondent on Review.

ROBERT H. JACKSON

Assistant General Counsel for the  
Bureau of Internal Revenue,  
Attorney for Respondent on Review.

[Endorsed]: U. S. Board of Tax Appeals. Filed  
Dec. 17, 1934. [28]

---

[Title of Court and Cause.]

#### STATEMENT OF EVIDENCE.

This cause came on for hearing before the Honorable Logan Morris, Member of the United States Board of Tax Appeals, on July 5, 1934, at San Francisco, California. John C. Altman, Esq., appeared for petitioner, and Robert H. Jackson, Esq., Assistant General Counsel for the Bureau of Internal Revenue, appeared for the respondent.

The entire evidence presented to the Board was in the form of a written stipulation of facts, entered into between petitioner and respondent and



filed with the Board at the hearing of the cause. The evidence presented in said written stipulation of facts is in narrative form and is as follows:

#### STIPULATED FACTS:

1. The petitioner is an individual, with his place of business at San Francisco, California, and with his [29] residence at Burlingame, California. During the entire calendar year 1927 petitioner and Ruth H. Lilienthal were, and continuously since said last mentioned date have been husband and wife and living together as such. Pursuant to the provisions of Section 223, subdivision (b) of the Revenue Act of 1926, petitioner and said Ruth H. Lilienthal did elect to make a single joint income tax return for the calendar year 1927, and in accordance with such election, petitioner did, on or about the 14th day of March, 1928, file with the Collector of Internal Revenue at San Francisco, California, a single joint income tax return for the calendar year 1927, wherein there was reported and included the income of petitioner and said Ruth H. Lilienthal, his wife, for such calendar year 1927.

2. Continuously from August 1921 to November 1926, said Ruth H. Lilienthal was the owner of 1100 shares of the common stock of Southern California Gas Company having a par value of \$100.00 per share. In November 1926, the said Ruth H. Lilienthal in a non-taxable exchange for said 1100 shares, received 4400 shares of the common stock of said Southern California Gas Company having a par

value of \$25.00 per share and continuously owned said 4400 shares to November 17, 1927. Said 4400 shares had a cost basis of \$16,500.00 to said Ruth H. Lilienthal.

3. In the year 1927 there were two existing corporations, Southern California Gas Company and Midway Gas Company, which were incorporated under the laws of the State of California, on October 5, 1910, and November 11, 1911, respectively. [30]

4. The Southern California Gas Company was principally engaged in distributing natural and artificial gas to retail and industrial consumers. The Midway Gas Company was principally engaged in purchasing natural gas in the oil fields, transporting it to cities and selling it to distributing companies. Midway sold the bulk of its gas to Southern California Gas Company.

5. Under date of October 17, 1927, an agreement was entered into between some of the larger stockholders of the Southern California Gas Company and the Midway Gas Company and a Syndicate of Bankers composed of Chase Securities Corporation, Stone and Webster, Hunter, Dulin and Company, and Pyncheon and Company, which Agreement provided, among other things, that (1) the Southern California Gas Company was to acquire the properties and business of the Midway Gas Company for capital stock and bonds of the Southern California Gas Company, and (2) for the organization of a new corporation which was to acquire all or prac-

tically all of the common stock of the Southern California Gas Company and all of the capital stock of the Midway Gas Company for cash and bonds of the contemplated new company. A copy of said Agreement is attached hereto and marked Exhibit "A".

6. On October 4, 1927, the Midway Gas Company adopted resolutions authorizing the sale of its properties and business to the Southern California Gas Company. Said resolution provided that it was the plan of the Board of Directors that "said common capital stock and said bonds of the Southern California [31] Gas Company to be received for Midway Gas Company assets shall be distributed to the stockholders of this corporation when, as and if received by this corporation and as soon as such distribution may lawfully be made."

7. On October 17, 1927, the Southern California Gas Company had issued and outstanding 240,000 shares of common stock of a par value of \$25.00 a share, and 182,226 shares of preferred stock of a par value of \$25.00 a share. Both classes of stock had equal share voting rights. On said date the Midway Gas Company had issued and outstanding 23,264 shares of capital stock of a par value of \$100.00 a share, all fully voting common stock.

8. On October 31, 1927, the Southern California Gas Company acquired all of the properties and business of the Midway Gas Company as of August 31, 1927, in consideration of a new issue of 80,000 shares of its capital stock of a par value of \$25.00 a share and \$2,942,000.00 face value of a new issue



of bonds of said Southern California Gas Company due in 1957, and the assumption of Midway Gas Company's liabilities. Immediately after this transaction and throughout the remainder of 1927, the Southern California Gas Company had outstanding 320,000 shares of common capital stock, and 182,226 shares of voting preferred stock.

9. In accordance with the terms of the Agreement of October 17, 1927, (Exhibit "A") a new corporation, the Southern California Gas Corporation, was organized under the laws of the State of Delaware on November 12, 1927. Said corporation had [32] an authorized capital stock of \$16,500,000.00 consisting of \$7,500,000.00 preferred and \$9,000,000.00 common, all of which was issued and outstanding on November 17, 1927. Under date of November 17, 1927, the Southern California Gas Corporation acquired under the provisions of the contracts of October 17 and November 17, 1927, (Exhibits "A" and "B" respectively, which are attached hereto) and certain deposit agreements referred to in said contracts, 23,121 shares out of a total of 23,264 shares of capital stock of the Midway Gas Company, and 239,608 shares out of a total of 320,000 shares of the outstanding common stock of the Southern California Gas Company, for cash and bonds of the said Southern California Gas Corporation.

The Southern California Gas Corporation issued, on November 17, 1927, for the said shares of stock of Midway Gas Company and Southern California

Gas Company, bonds having a par value of \$24,942,000. Virtually all of the remaining \$58,000 face value of bonds of that issue were subsequently issued in the acquisition of the remaining common stocks of the two said companies. The stocks of Southern California Gas Company and Midway Gas Company, acquired by Southern California Gas Corporation, as herein set forth, were deposited with a trustee as collateral for the bonds issued as partial consideration therefor.

10. On November 17, 1927, the Board of Directors of Midway Gas Company declared a dividend of \$2,942,000, and paid the same in Temporary Certificates of the First Mortgage [33] and refunding Gold Bonds, 5%, due 1957 of Southern California Gas Company.

These bonds were sold on November 17, 1927, at 95, and the proceeds therefrom were used by the Southern California Gas Corporation of Delaware in the acquisition of the stock of Midway Gas Company and of Southern California Gas Company, as aforesaid.

On December 10, 1927, Midway Gas Company distributed the 80,000 shares of common stock of the Southern California Gas Company to its stockholders, one of whom was Southern California Gas Corporation, which received, as such stockholder, 79,508 of the 80,000 shares of the common stock of Southern California Gas Company.

Midway Gas Company did no business thereafter, but retained its charter until March 21, 1934, for the purpose of settling its prior years income taxes.

11. After the acquisition of the 319,116 shares of the common stock of the Southern California Gas Company by the Southern California Gas Corporation, as aforesaid, the Southern California Gas Company continued, and still does continue, its corporate existence. Its operations were enlarged as it then had the gas gathering and transporting assets formerly owned by Midway Gas Company. There were some changes in its directorate and management.

12. Pursuant to the agreement of October 17, 1927, Exhibit "A", as modified by an agreement dated November 17, 1927, a copy of which is attached and marked Exhibit "B", said Ruth H. [34] Lilienthal received for her 4400 shares of common stock of Southern California Gas Company, \$260,609.12 cash and bonds of Southern California Gas Corporation of the par value of \$339,500.00 and of the fair market value of \$312,340.00.

The \$260,609.12 was the amount of cash payable to said Ruth H. Lilienthal (including proceeds of sale of a fractional bond), after deducting \$1.375 per share brokerage, commissions and her share of other expenses of carrying out the transaction.

13. The petitioner reported in his single joint income tax return for the calendar year 1927, a profit of \$260,609.12, being the amount of the cash received by said Ruth H. Lilienthal. Said Ruth H. Lilienthal did not, in 1927, sell or otherwise dispose of any of the bonds of Southern California Gas Corporation received for her stock.

14. The respondent adjusted said Ruth H. Lilienthal's income for 1927, by increasing the same in the amount of \$295,840.00, representing the fair market value of the bonds received, after deducting from such fair market value the sum of \$16,500.00, representing the cost to said Ruth H. Lilienthal of her stock.

The deficiency letter explained the adjustment as follows:

“With reference to the exchange of stock of the Southern California Gas Company, it is held that this transaction does not fall within the provisions of Section 203(d)(1) of the 1926 Act. For the purpose of determining the amount of gain or loss, the total consideration received for the stock disposed of is the fair market value of the bonds as of the effective date of the transaction, plus the amount received in cash. Capital net gain therefore has been adjusted \* \* \*.” [35]

---

#### EXHIBIT “A”

AGREEMENT, dated October 17, 1927, between the corporations whose names are subscribed hereto (hereinafter called the “Shareholders”), parties of the first part, and CHASE SECURITIES CORPORATION, a corporation of the State of New York, STONE & WEBSTER, INC., a corporation of the Commonwealth of Massachusetts, HUNTER,

DULIN & CO., a corporation of the State of California, and PYNCHON & CO., a copartnership (hereinafter called the Bankers), parties of the second part,

WITNESSETH:

WHEREAS, the Southern California Gas Company (herein called the "Southern Company") is a corporation of the State of California owning certain public utility properties in said state and has outstanding \$6,000,000 par value of common stock divided into 240,000 shares of the par value of \$25 each, certain shares of preferred stock and certain bonds and indebtedness, and the Midway Gas Company (herein called the "Midway Company") is also a corporation of the State of California owning certain public utility properties in said State and has outstanding \$2,326,400 par value of capital stock divided into 23,264 shares of the par value of \$100 each; and

WHEREAS, the Southern Company plans to refund certain of its bonds and indebtedness and also to acquire the properties and assets of the Midway Company and proposes to issue \$5,704,000 principal amount of its First Mortgage and Refunding Gold Bonds, 5% Series, due 1957, for such refunding and other corporate purposes and \$2,942,000 of its said bonds and \$2,000,000 par value of its common stock (additional to the \$6,000,000 of common stock now outstanding) [36] in exchange for the properties and assets of the Midway Company, and the Bankers are to purchase said \$5,704,000 principal amount



of bonds from the Southern Company and are to offer to the public therewith said \$2,942,000 principal amount of bonds to be issued to the Midway Company and to arrange for a delivery to them of all or substantially all of said last mentioned bonds by the stockholders of the Midway Company when the same shall be distributed to them; and

WHEREAS, the Railroad Commission of the State of California has duly authorized, by Decision No. 18918, dated October 11, 1927 the issue of said bonds and said \$2,000,000 par value of common stock of the Southern Company; and

WHEREAS, the Bankers propose to organize a company (herein called the "New Company") to purchase or otherwise acquire all or substantially all of the common stock of the Southern Company (including the common stock to be issued to the Midway Company as aforesaid) and the capital stock of the Midway Company upon the terms hereinafter set forth and

WHEREAS, the Shareholders own or control a large majority of the common stock of the Southern Company and of the stock of the Midway Company now outstanding, to-wit: 224,040 shares of the common stock of the Southern Company and 14,389 shares of the stock of the Midway Company, and additional amounts of said outstanding stocks—to-wit: not less than 14,850 shares of the common stock of the Southern Company and not less than 8,490 shares of the stock of the Midway Company—have been deposited with the Union Bank & Trust



Company of Los Angeles, California, under certain deposit agreements dated June 24, 1927, one agreement relating to the stock of the Southern Company and the other [37] to the stock of the Midway Company, subject to the control of the respective Committees named in said agreements, and the Shareholders and the said Committees (as authorized by said deposit agreements) propose to transfer or cause to be transferred to the New Company the shares of common stock of the Southern Company and the shares of stock of the Midway Company, respectively, so owned or controlled by the Shareholders and/or said Committees, for the price and under the conditions provided herein;

NOW THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, it is agreed as follows:

#### I.

It is agreed between the parties hereto that the Bankers may make a public offering of the \$2,942,000 principal amount of said bonds of the Southern Company to be issued to the Midway Company in exchange for its properties and assets as aforesaid, at the same time and as a part of the offering by the Bankers of the \$5,705,000 principal amount of said bonds which the Bankers are to purchase directly from the Southern Company as aforesaid; and it is understood that the said \$2,942,000 of bonds of the Southern Company to go to the Midway Company as aforesaid are to be distributed to the New Company as a stockholder of the Midway Company

and the other stockholders thereof and that the Bankers shall cause the New Company to deliver that part of said \$2,942,000 of bonds so distributed to it to the Bankers at the same time and place that the bonds to be purchased directly from the Southern Company are delivered, against payment therefor at the price in percentage of the principal amount and accrued interest to be paid to the Southern Company for the bonds purchased by the Bankers directly from it. [38]

## II.

The Bankers agree:

(a) To organize the New Company forthwith under the laws of such State and with such name and such corporate powers as shall be approved by counsel for the Bankers and counsel for the Shareholders.

(b) To purchase from the New Company its common and/or preferred stock (in such amount as the Bankers shall determine) and to pay therefor an amount of money in cash sufficient to pay that part of the purchase price payable under the provisions of Division IV hereof in cash for the shares of Common stock of the Southern Company and shares of stock of the Midway Company which shall be transferred to the New Company pursuant to this agreement, less the proceeds to the New Company of the sale of said \$2,942,000 principal amount of said bonds of the Southern Company to be issued to the Midway Company as aforesaid.

(c) To cause the New Company to authorize and issue its Collateral Trust Bonds "5% Series, due 1937", under a Collateral Trust Indenture substantially in the form of the draft indenture agreed to by the parties hereto with such changes as may be approved by the respective boards of directors of the Shareholders and Counsel for the Bankers, to a principal amount sufficient to pay that part of the purchase price payable under the provisions of Division IV hereof in such bonds for the shares of common stock of the Southern Company and the shares of stock of the Midway Company which shall be transferred to the New Company pursuant to this agreement, such bonds to be used in part payment for the shares of the Southern Company and of the Midway Company to be purchased by the New Company under this agreement. [39]

(d) To cause the New Company to purchase and pay for the common stock of the Southern Company and the stock of the Midway Company to be transferred to the New Company hereunder, at the price and under the conditions herein provided.

(e) To cause the New Company, as soon as practicable under the laws of California, to cause the said \$2,000,000 par value of stock of the Southern Company to be issued to the Midway Company for its properties and assets as aforesaid, to be distributed by way of liquidation or otherwise to the Shareholders of the Midway Company, to the end that the New Company, as the holder of the stock of the Midway Company to be transferred here-

under, will acquire at least its pro rata share of the said \$2,000,000 par value of common stock of the Southern Company.

### III.

The Shareholders agree:

To transfer or cause to be transferred to the New Company, at the prices and under the conditions herein set forth, all of the shares of the common stock of the Southern Company and of the stock of the Midway Company owned or controlled by the Shareholders and the stock deposited with the Union Bank & Trust Company of Los Angeles, California, as aforesaid; and to use their best efforts to cause the holders of other shares of the common stock of the Southern Company and of the stock of the Midway Company to transfer such shares to the New Company, at the prices therefor, respectively set forth in paragraphs (x) and (y) of Division IV hereof.

### IV.

The purchase price of said outstanding stock of the Southern Company and the stock of the Midway Company owned or controlled by the Share- [40] holders as aforesaid, is as follows:

(a) For each such share of the Common stock of the Southern Company (par value \$25 each), the sum of \$60.37 in cash and \$77.80 in principal amount of the Collateral Trust Bonds of the New Company of the 5% Series, due 1937;

(b) For each such share of the stock of the Midway Company (par value \$100 each), the sum

of \$241.48 in cash and \$311.22 in principal amount of said Collateral Trust Bonds of the New Company of the 5% Series, due 1937.

The purchase price of the shares of common stock of the Southern Company and the shares of stock of the Midway Company deposited with the Union Bank & Trust Company as aforesaid is as follows:

(x) For each such share of the common stock of the Southern Company (par value \$25 each), the sum of \$77.45 in cash and \$60.05 in principal amount of said Collateral Trust Bonds, 5% Series, due 1937;

(y) For each such share of the stock of the Midway Company (par value \$100 each), the sum of \$309.80 in cash and \$240.20 in principal amount of said Collateral Trust Bonds 5% Series, due 1937.

The cash payments above mentioned on account of the purchase of said stocks of the Southern Company and the Midway Company shall be subject to proper adjustment of the accrued dividends on the stock of the Southern Company and the stock of the Midway Company and the accrued interest on the Collateral Trust Bonds of the New Company, adjusted as of the date of the consummation of the purchase.

#### V.

The purchase price of the shares of common stock of the [41] Southern Company and the stock of the Midway Company to be sold hereunder will be paid by the New Company against the delivery



to the New Company of the certificates representing the shares of the Southern Company and the Midway Company to be sold hereunder, properly endorsed and stamped for transfer, at such bank or trust company in the City of Montreal, Canada, as the Shareholders shall designate, the cash portion of such purchase price to be paid in New York funds or exchange, in respect of the Shareholders to or upon their respective orders, and in respect of the depositing stockholders to or upon the order of the Depositary; and the bond portion of such purchase price, in respect of the Shareholders in bonds aggregating in principal amount the bonds to which all the Shareholders are entitled in such permissible denominations and to such person as they shall designate, and in respect of the depositing stockholders in bonds aggregating the principal amount the bonds to which all the depositing stockholders are entitled in such permissible denominations and to such person as the Depositary shall designate.

The delivery and payment fo such shares by the New Company shall be made as nearly simultaneously as may be with the payment by the Bankers for the stock of the New Company, and shall be made on such date, not later in any event than December 1, 1927, as shall be designated in a ten days' written notice from the Bankers to the Shareholders. Such notice shall be delivered to the Shareholders in Montreal, Canada, and delivery at the office of



Mr. Lawrence Macfarlane, Royal Trust Building, Montreal, Canada, shall be deemed due delivery.

## VI.

The Shareholders agree that they will, after the consummation of this agreement, cooperate with the Bankers to effect such changes in [42] the personnel of the directors and officers of the Southern Company and the Midway Company as the Bankers may desire.

## VII.

All legal matters arising in connection with the form of any documents, the authorization and execution thereof, the issuance of any securities, the sufficiency of any orders, resolutions or approvals of the Railroad Commission of the State of California and all other legal matters arising under any of the provisions of this agreement are to be subject to the approval of Messrs. Rushmore, Bisbee & Stern, as counsel for the Bankers, and Messrs. Taylor, Blanc, Capron & Marsh, attorneys for the Shareholders.

## VIII.

It is understood that, pending the consummation of this agreement, the Southern Company and the Midway Company will not declare or pay dividends or make any other distribution to their stockholders, except for regular preferred dividends, dividends on the common stock of the Midway Company at 20% per annum and on the common stock of the Southern Company at 12% per annum and will not

engage in any extraordinary transactions not contemplated hereby unless approved by the Bankers.

IN WITNESS WHEREOF, CHASE SECURITIES CORPORATION, STONE & WEBSTER, INC., HUNTER, DULIN & CO. and PYNCHON & CO. and the subscribing Shareholders, and each of them, have caused this agreement to be duly executed, all as of the day and year first above written, at Montreal, Canada.

(The Bankers)

CHASE SECURITIES CORPORATION,  
STONE & WEBSTER, INC.,  
HUNTER, DULIN & CO. [43]  
PYNCHON & CO.

By C. F. BATCHELDER, Attorney in Fact.

(The Shareholders)

MERIDIAN LIMITED

By A. K. HUGGESEN, President,  
and JAMES B. TAYLOR,

Assistant Secretary.

RAYBEN LIMITED

By A. K. HUGGESEN, President  
and JAMES B. TAYLOR,

Assistant Secretary

KERCKHOFF LIMITED

By A. K. HUGGESEN, President  
and JAMES B. TAYLOR,

Assistant Secretary

LEK SECURITIES COMPANY  
LIMITED

By A. K. HUGGESEN, President  
and JAMES B. TAYLOR,

Assistant Secretary

OHIO INVESTMENTS LIMITED

By A. K. HUGGESEN, President  
and JAMES B. TAYLOR,

Assistant Secretary

SAN ANTONIO LIMITED

By A. K. HUGGESEN, President  
and JAMES B. TAYLOR,

Assistant Secretary

SAN MARINO LIMITED

By A. K. HUGGESEN, President  
and JAMES B. TAYLOR,

Assistant Secretary [44]

---

EXHIBIT "B"

AGREEMENT, dated November 17, 1927, between the Canadian Corporations whose names are subscribed hereto under the designation, and who are hereinafter called, THE SHAREHOLDERS, parties of the first part: CHASE SECURITIES CORPORATION, a corporation of the State of New York, STONE & WEBSTER, INC., a corporation, of the Commonwealth of Massachusetts, HUNTER, DULIN & CO., a corporation of the State of California, and PYNCHON & CO., a co-partnership, herein collectively called THE BANKERS, parties of the second part; and SOUTHERN CALIFORNIA GAS CORPORATION, a corporation of the State of Delaware, hereinafter called the DELAWARE CORPORATION, party of the third part, WITNESSETH:

WHEREAS, the Bankers and the shareholders have heretofore, at Montreal, Canada, entered into

three agreements all dated October 17, 1927 (the first named being hereinafter referred to as the principal agreement and the others as supplemental agreements), as follows: (a) agreement between the Bankers and all of the Shareholders contemplating the organization of a New Company to acquire common stock of Southern California Gas Company and stock of Midway Gas Company; (b) agreement between the Bankers and Meridian Limited, Kerckhoff Limited and San Marino Limited relating to the acquisition by such New Company of share of stock of Producers Gas & Fuel Company; and (c) agreement between the Bankers and Meridian Limited, Rayben Limited and Kerckhoff Limited relating to the acquisition by such New Company of one-half of the stock of Ventura Fuel Company; and

WHEREAS, the Delaware corporation has been incorporated under the laws of the State of Delaware and has entered into an agreement with the Bankers to take over and carry out the obligations performable by the New Company under the principal and supplemental agreements; and

WHEREAS the Bankers have purchased or caused to be purchased 75,000 shares of \$6.50 Cumulative Dividend Preferred Stock and 600,000 shares of Common Stock of the Delaware Corporation without nominal or par value and there had been paid in therefor the sum of \$18,600,000; and

WHEREAS the Shareholders and their counsel approve the organization of the Delaware Corporation as such New Company; and

WHEREAS the recitals in the principal agreement as to the respective numbers of shares of stock of Southern California Gas Company and Midway Gas Company owned or controlled by the Shareholders and deposited with Union Bank & Trust Co. of Los Angeles as Depositary under the deposit agreements referred to in the principal agreement should be corrected, the proper amounts as of the date hereof being as follows:

	Southern Cali- fornia Gas Company Com- mon Stock Shares	Midway Gas Company Capital Stock Shares
Owned or controlled by		
Shareholders	229,744	15,554
Deposited with Union		
Bank & Trust Co. of		
Los Angeles	9,864	7,567
		[45]
Undeposited Stock	392	143
	—————	—————
Total	240,000 shares	23,264 shares

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, IT IS AGREED AND PROVIDED AS FOLLOWS:

1. The Bankers hereby transfer and assign unto the Delaware Corporation all of their rights to acquire shares of stock under the principal agreement and supplemental agreements, and the Shareholders consent to such assignment and hereby recognize the Delaware Corporation as the New Company provided for in the principal agreement and supplemental agreements.



2. The parties hereto agree that the purchase of and payment for the shares of stock owned and controlled by the Shareholders and for the shares of stock deposited with said Union Bank & Trust Co. of Los Angeles as above recited be consummated forthwith.

3. Paragraphs (a) and (b) of Division IV of the principal agreement are hereby amended to read as follows:

“(a) For shares of the common stock of the Southern Company (par value \$25 each), at the rate of \$60.97675 per share in cash and \$77.1755 per share in principal amount of the Collateral Trust Bonds of the New Company of the 5% Series due 1937;

“(b) For shares of the stock of the Midway Company (par value \$100 each), at the rate of \$243.907 per share in cash and \$308.702 per share in principal amount of said collateral Trust Bonds of the New Company of the 5% Series due 1937.”

4. The parties hereto approve the attached Exhibit A, setting forth the amount of the bonds to be issued and cash to be paid, after giving effect to adjustments for fractional interests and for accrued interest and accrued dividends; and the Shareholders hereby authorize and direct the Delaware Corporation to make payments of such cash in New York Funds, and to deliver the Collateral Trust Bonds, to the persons and in the amounts respectively indicated in said Exhibit A.



IN WITNESS WHEREOF, Chase Securities Corporation, Stone & Webster, Inc., Hunter, Dulin & Co., and Pynchon & Co., and the subscribing Shareholders and each of them, and the Delaware Corporation, have caused this agreement to be duly executed all as of the day and year first above written, at Montreal, Canada.

(The Bankers)

CHASE SECURITIES CORPORATION  
STONE & WEBSTER, INC.

[46]

HUNTER, DULIN & CO.

PYNCHON & CO.

By CHASE SECURITIES

CORPORATION

By CHARLES F. BATCHELDER

Assistant Vice President

Syndicate Manager

(The Delaware Corporation)

SOUTHERN CALIFORNIA GAS  
CORPORATION

By STEPHEN A. VAN NESS,

Vice President

[Corporate Seal]

Attest:

CHARLES F. BATCHELDER,

Assistant Secretary. [47]

(The Shareholders)

MERIDIAN LIMITED

By A. C. BALCH, Vice President

[Corporate Seal]

and JAMES B. TAYLOR,

Assistant Secretary

## RAYBEN LIMITED

By BEN R. MEYER, Vice President

[Corporate Seal]

and JAMES B. TAYLOR,

Assistant Secretary

## KERCKHOFF LIMITED

By G. C. YOUNG, Vice-President

[Corporate Seal]

and H. KRESSMAN, Secretary

## LEK SECURITIES COMPANY

## LIMITED

By G. C. YOUNG, Vice President

[Corporate Seal]

and H. KRESSMANN, Secretary

## OHIO INVESTMENTS LIMITED

By G. C. YOUNG, Vice President

[Corporate Seal]

and H. KRESSMANN, Secretary

## SAN ANTONIO LIMITED

By G. C. YOUNG, Vice President

[Corporate Seal]

and H. KRESSMANN, Secretary

## SAN MARINO LIMITED

By G. C. YOUNG, Vice President

[Corporate Seal]

and H. KRESSMANN, Secretary [48]

---

The foregoing evidence is all of the evidence ad-  
duced at the hearing before the Board of Tax Ap-  
peals, and the same is approved by the undersigned,

John C. Altman, as attorney for Philip N. Lilienthal, petitioner.

JOHN C. ALTMAN,  
Attorney for Petitioner.

---

The foregoing evidence is all of the evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, as attorney for respondent.

(Signed) ROBERT H. JACKSON,  
Assistant General Counsel for the Bureau of Internal Revenue, Attorney for Respondent.

[Endorsed]: Approved and Ordered Filed this 12 day of Feb., 1935.

(Sgd) LOGAN MORRIS,  
Member.

[Endorsed]: U. S. Board of Tax Appeals. Lodged Feb. 11, 1935.

[Endorsed]: U. S. Board of Tax Appeals. Filed Feb. 12, 1935. [49]

---

[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of

Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by Philip N. Lilienthal, Petitioner:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board.
  - (a) Petition including annexed copy of deficiency letter.
  - (b) Answer.
3. Opinion and decision of the Board. [50]
4. Petition for review, together with proof of service of notice of filing petition for review.
5. Statement of the evidence as settled and allowed.
6. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record. (Not included in record)
7. This praecipe, together with proof of notice of filing praecipe and of service of a copy of praecipe.

(Signed) JOHN C. ALTMAN,  
Attorney for Petitioner.

Service of a copy of the within praecipe is hereby admitted this 26th day of January, 1935.

(Signed) ROBERT H. JACKSON,  
Assistant General Counsel for Bureau of Internal Revenue.

[Endorsed]: U. S. Board of Tax Appeals. Filed Feb. 11, 1935. [51]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 51, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 26th day of February, 1935.

[Seal]

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeals.

---

[Endorsed]: No. 7788. United States Circuit Court of Appeals for the Ninth Circuit. Philip N. Lilienthal, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed March 4, 1935.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

